

Testimony of
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Thank you for allowing me to be here today. I would like to thank the Chairman and his staff for all their hard work. There are many immigration bills currently being considered by Congress but none of them deal with specific problems within the H2A program as well as H.R. 3604, "Temporary Agricultural Labor Reform of 2003". Today I would like to share with you my thoughts on the H2A program, why I use it, and why without changes to the program I will be unable to continue using it. I explain to you why I feel that H.R. 3604 is the only immigration bill that addresses the problems in the H-2A program and why I feel that other bills such as AgJOBS are not the fix that we need. Lastly I will share a few thoughts on areas within the current law that still need to be addressed.

My name is Chalmers Carr. I am the owner and operator of Titan Peach Farms, Inc., the largest producer of peaches outside of California. I am an H-2A employer who seasonally employs up to 250 migrant workers. I volunteer a great deal of my spare time to organizations like American Farm Bureau where I just completed a term as chairman of the Labor Committee. I also serve as the Treasurer of the South Carolina Peach Council and Chairman of the council's research committee.

As I am sure you are aware, the H-2A guest worker program provides agricultural producers with access to legal seasonal migrant workers when it can be proven that a sufficient number of domestic workers are not available. The H2A program is different from other guest worker programs in that the program calls for the use of the highest of three wage calculations: federal minimum wage, prevailing wage or the adverse wage effect rate (AEWR). Of these three, the AEWR is consistently the highest. All other guest worker programs call for using the prevailing wage rate. The H-2A program also requires its users to offer free housing and transportation during the term of the contract and to reimburse worker's transportation costs from their home country all the way to the farm. The certification process is lengthy and

cumbersome. Program users are required to employ any US worker desiring a job during the first half of the contract. These are stark differences between the H-2A program and other guest worker programs like H-1A and H-2B. I often ask why the ag industry is treated so much more differently than non-agri-business.

With all that being said, I do use the program. Why? Because it is the only way that I can be assured of a reliable legal work force for my extremely labor intensive farming operation. When I went to the program five years ago it was not because of a lack of available workers, it was simply because I feared that a high percentage of my workers were falsely documented. I knew that Titan Peach Farms would not be able to afford the losses sustained if the INS raided my farm during harvest and I feared that the Social Security Administration would refuse to accept the W-3 wage report at the end of the year.

Today, I can honestly say that going to the H-2A program has been one of the BEST and one of the WORST business decisions I have ever made. Over the past five years I have employed as few as 200 and as many as 260 H-2A workers seasonally. The benefits to my business are many! The most obvious is that 100% of my work force is legal. In those five years I have enjoyed a worker return rate of over 90%. By the sheer nature of having a trained workforce return year after year my operation is more efficient and the quality of our product is the best it has ever been. These H2A employees take pride in their jobs and have a feeling of ownership in Titan Peach Farms. These workers have become a part of my business and my life, as I have become a part of theirs. Each year my family and I receive letters of invitation to come to Mexico to see where they live and how their lives have benefited by being able to come safely to my farm to work and to be able to return home at the end of the contract.

The majority of my workers come from two states in Mexico – Hidalgo and Nayarit. Their home towns are extremely rural and available work is sporadic at best. In fact There are women who work for three months at Titan Peach Farms and make more money than they would in an entire year and often two years in their home towns. I tell you this to you to convey that these H2A workers do not desire to come here to live indefinitely. They are happy to have a safe means of travel to my farm, work for a limited period of time, return to their homes.

I have told you how the H2A program has improved my operation and how much these employees mean to me. Now you are probably thinking – where do American workers

fit into the picture? I have been in the H2A program for five years with a contract for over 200 workers each season. In that time I have received less than 20 domestic referrals. No more than ten of these workers actually showed up to work and only two workers in those five years stayed on the job for more than one week.

Unfortunately, I sit here today to tell you that the rising cost of participation in the H-2A program is penalizing me to the point that I can no longer compete with my fellow non-H-2A peach growers. Titan Peach Farms adheres to a higher labor standard resulting in a more efficient operation than they have. My current AWR is \$7.48 per hour rising to \$7.88 per hour this season. Efficiency can only save you so much. The prevailing wage in South Carolina for similar work is \$5.50/hour. I have to pay in excess of \$2.00 per hour more than that not counting the housing, transportation, and administration costs that. Housing, transportation, and administration costs calculate to another \$2.00 per hour on top of that. Therefore, in the 2004 crop season, I will be paying close to \$12.00 an hour for unskilled manual labor. This is to say nothing of the fear of litigation that one expects simply by being in the H-2A program.

I need your help. I need for Congress to understand that without true reform like the Chairman's bill, I will be forced out of this program returning to a system where I could be breaking the law.

The bill sponsored by Chairman Goodlatte, H.R. 3604, the "Temporary Agricultural Labor Reform of 2003" is the only legislation that correctly addresses the problems of the H-2A program. Let me tell you as an H-2A user this bill gives life to the program while the consequences of the AgJOBS Bill would be death to it. The Chairman's bill changes the AWR to prevailing wage. AgJOBS calls for a three-year freeze in the AWR and if Congress doesn't act on a new wage methodology then the AWR will annually increase. I know of no other federal program that has a mandated annual wage increase. Why should agriculture have this burden?

Both H.R. 3604 and AgJOBS streamline the application process, reform that is desperately needed. As Chairman of the American Farm Bureau Labor Committee I have listened first hand to stories from producers who were unable to use the H2A program because the application process was too slow or regional biases within the Department of Labor against the program kept producers' applications from moving through the system.

H.R. 3604 also changes the program so that housing allowances can be used in lieu of owner provided housing. Here again, this opens the program up to users who could not afford the investment in housing for a short term labor crunch.

Chairman Goodlatte's bill offers illegal aliens a one time waiver to return home and then be able to participate in the H-2A program. Under current law anyone known to have been in the country illegally is banned from participation in any guest worker program for 10 years. This will encourage unauthorized workers to return home where AgJOBS offers to reward these law breakers by giving them the amnesty/adjusted status. AgJOBS does nothing to deter future workers from crossing the border illegally. In fact, it reinstates the belief that if you come into our country illegally every fifteen years or so we will legalize you. Most upsetting to me is that AgJOBS will allow these law breakers to take the jobs from law abiding H-2A workers. This is to say that they can be referred to H-2A job orders as authorized U.S. workers. I know more than a few producers that will have grave issues with this. If AgJOBS passes and their workers are legalized, the producer would have to either raise wages to equal that of a neighboring H-2A or lose their workers to the higher paying job. This will leave the non-H-2A producers with no labor and they will most likely return to employing workers who cross the border illegally creating vicious cycle.

Lastly H.R. 3604 does not contain any private right of action for H-2A employers. The H-2A program is governed by the Secretary of Labor. Legal Services Corporations have a long history of disdain for the H-2A program. They worked closely with the authors of the AgJOBS legislation, and drafted a private right of action into the proposed law. This will now give Legal Services unequivocal access to bring suits against H-2A producers on behalf of the H2A employers. Agriculture has changed. We are agri-business. The harvest of shame of 30-40 years ago is no longer. H.R. 3604 recognizes that current law, with the Department of Labor administering it, gives sufficient protections for the H-2A worker.

I understand no bill is perfect, nor can it satisfy all interested parties. That being said, there are a few problems with the H-2A problem I would like to see addressed. First, I would like to see the 50% domestic recruitment rule under the current law changed to mirror that of other guest worker programs. Also, the Arriaga decision has caused huge problems in the H-2A program and resulting in unjust lawsuits against producers. The H-2A guidelines clearly state that travel reimbursement must be refunded to a worker after 50% of the contract is performed. The Arriaga decision in the 11th Circuit Court of Appeals changed this for all H-2A producers by requiring

them to pay travel expenses and other fees within the first week of employment. Besides making producers pay new expenses, this law virtually creates a new safe and free "coyote" system. Foreign nationals can now pay to travel to the United States under an H2A contract, get here, have this money reimbursed within the first week, and then disappear. The irony in this is that currently we are spending billions of dollars to secure our borders, yet laws are being drafted that provide safe entrance into the country possibly enable workers to become illegal aliens. In closing, I would ask that you consider including legislative language that could remedy the injustice of the Arriaga decision.

Thank you for allowing me the opportunity to testify before you today. I am a young producer who has made the decision to try to live between the letters of the law. As I leave here today, I ask you to consider all the H-2A producers in this country like me who have struggled with a tough program in order to follow the law and, without a change such as that in Chairman Goodlatte's bill, will be forced to get out of the H-2A program and return to a system that we know is broken.